

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JACQUELINE M. WOLD

Claimant

VS.

CITY OF OVERLAND PARK

Self-Insured Respondent

Docket No. **1,013,612**

ORDER

Self-Insured respondent requests review of the June 10, 2008 Award by Administrative Law Judge Kenneth J. Hursh. The Board heard oral argument on September 3, 2008.

APPEARANCES

James E. Martin of Overland Park, Kansas, appeared for the claimant. Kip A. Kubin of Kansas City, Missouri appeared for the self-insured respondent.

RECORD AND STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

The Administrative Law Judge (ALJ) found claimant sustained a 10 percent permanent partial impairment to her left forearm.

Respondent requests review and argues that the left upper extremity should have been the subject of a separate claim as it was not the natural and probable consequence of the right upper extremity injury. Respondent further argues the claimant failed to meet her burden of proof to establish she suffered any permanent impairment in her left upper extremity.

Claimant argues the ALJ's Award should be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

Jacqueline Wold has been employed as a police officer with the police department since March 23, 1998. As she performed her job duties as a patrol officer she developed problems in her upper extremities. In a letter from Dr. Lynn D. Ketchum dated December 16, 2004, claimant's medical history was detailed in pertinent part:

In approximately 1999, she [claimant] began having problems with her right hand while driving. Later the left began having problems with numbness and tingling, which awakened her at night. She saw Dr. Foos, who obtained an EMG on the right, which showed moderately positive right carpal tunnel syndrome. She was treated with splints and her condition continued to progress. On October 3, 20093, [sic] she had a right carpal tunnel release by Dr. Joel Lane. Since surgery, she has had no symptoms on the right.

She has had no surgery on the left and the left has not been studied electrophysiologically. She has symptoms on the left of waking her up two to three times a month with tingling in the radial three digits. She did sleep with her wrist flexed under her chin but does not do that anymore, although it may be slightly extended. I told her that if this increases to the point where she has numbness two to three times a week, she should wear a splint to keep the left wrist in neutral. This does not bother her during the day.¹

At the time of the December 2004 examination, Dr. Ketchum noted claimant had symptoms on the left consisting of nocturnal paraesthesias two or three times a month with tingling in the radial three digits of the left hand. The doctor advised claimant that if she continued to have the paraesthesias more frequently that she should wear a splint at night in order to keep the wrist in a neutral position. Claimant did not report any symptoms with regard to her right hand. The letter further noted that Dr. Ketchum performed nerve conduction studies on claimant's left wrist and determined the results were within normal limits. The doctor released claimant from further treatment without restriction and rated her right upper extremity.

Claimant testified that as she continued working the symptoms in her left upper extremity worsened. And when she had been experiencing more severe problems with her right upper extremity she had used her left arm more. After claimant was examined by Dr. Ketchum in December 2004 she did not receive any treatment for her left upper extremity but she followed his recommendation to wear a splint at night when necessary.

¹ P.H. Trans. (Jan. 25, 2006), Cl. Ex. 1.

Claimant's left hand paraesthesias continued to worsen and she was seen again by Dr. Ketchum on November 16, 2005. Claimant's nocturnal paraesthesias in her third and fourth digits on her left hand was occurring every night so he recommended that she wear a brace. A repeat nerve conduction study was performed and revealed that claimant's left median nerve had changed from 3.6 to 4.7 milliseconds within a year. At this examination, Dr. Ketchum diagnosed claimant as having left carpal tunnel syndrome and recommended a carpal tunnel release. On July 17, 2006, the doctor performed the left carpal tunnel release. A final disability rating was not provided.

After surgery, claimant returned to see Dr. Ketchum on a weekly basis for awhile. She was treated conservatively with physical therapy. Her grip strength improved and she was returned to regular duty in November 2006. On May 15, 2007, Dr. Ketchum rated claimant's left upper extremity at 10 percent due to loss of grip strength. The doctor's rating was based on the *AMA Guides*² using table 16. Claimant's right hand did not have a ratable condition. Dr. Ketchum opined:

Because she had no problems with her hand prior to working for the City of Overland Park and did driving, typing, and shooting and over a period of time developed numbness and tingling with her left hand on a positive nerve conduction study whereas it had been negative at the time that she had her right hand operated on, I felt that overuse of the left hand and because of that surgery and the course of her work was the cause of developing left carpal tunnel syndrome.³

Claimant testified she still has a nodule, dull aches and soreness on her left extremity most of the time.

Respondent argues that after claimant had surgery for her right carpal tunnel syndrome she was examined and rated by Dr. Ketchum on December 16, 2004. As a result of that examination the doctor noted claimant had no evidence of carpal tunnel on claimant's left and released her without restrictions. Consequently, respondent argues claimant later developed left carpal tunnel syndrome which should be considered a new discrete trauma and because she failed to file a claim for this new accident her instant claim should be barred.

Claimant filed her original application for hearing with the Division of Workers Compensation on October 30, 2003. She alleged the cause of her accident as repetitive use of her upper extremities continuing each and every day worked. And the extent of her injuries was listed as right upper extremity carpal tunnel syndrome.

² American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *Guides* unless otherwise noted.

³ Ketchum's Depo. at 11-12.

On January 16, 2004, claimant filed an amended application for hearing again alleging bilateral upper extremity injuries and specifically noting that the right upper extremity was initially injured but symptoms had developed in the left upper extremity.

Although Dr. Ketchum noted in his December 16, 2004 report that claimant had no evidence of carpal tunnel on the left, he also noted in that same report that if her symptoms on the left worsened she should wear a splint. And at his deposition he further noted that because of the grip weakness she demonstrated on the left at his exam on December 16, 2004, he could have given claimant a permanent rating for that condition at that time.

From the outset this has been a claim for upper extremity injuries. The application for hearing as well as the amended application all claimed repetitive upper extremity injuries continuing each and every work day. Claimant complained of bilateral pain but readily agreed that initially the right was worse than her left. At the first preliminary hearing on this claim, held on December 15, 2003, the claimant testified that she was having symptoms with her left arm but the symptoms were not as bad as her right arm. Her left upper extremity complaints are documented in the medical record but were initially not as severe as her right. Dr. Ketchum noted those complaints and recommended the use of a splint. Nonetheless, when the initial nerve conduction study did not confirm left carpal tunnel syndrome the doctor did not offer additional treatment. But over the next 11 months claimant continued to work and her left upper extremity symptoms gradually increased and worsened.

Dr. Ketchum's uncontradicted testimony was that he felt claimant developed the left carpal tunnel syndrome from overuse of her left hand after the right hand surgery as well as the work she performed thereafter.

In *Logsdon*,⁴ the Kansas Court of Appeals reiterated the rules found in *Jackson* and *Gillig*:

Whether an injury is a natural and probable result of previous injuries is generally a fact question.

When a primary injury under the Worker's Compensation Act is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury, including a new and distinct injury, is compensable if it is a direct and natural result of a primary injury.

When a claimant's prior injury has never fully healed, subsequent aggravation of that same injury, even when caused by an unrelated accident or trauma, may be a natural consequence of the original injury, entitling the claimant to postaward medical benefits.

⁴ *Logsdon v. Boeing Company*, 35 Kan. App. 2d 79, Syl. ¶¶ 1, 2, 3, 128 P.3d 430 (2006).

In *Casco*,⁵ the Kansas Supreme Court stated:

When there is expert medical testimony linking the causation of the second injury to the primary injury, the second injury is considered to be compensable as the natural and probable consequence of the primary injury.

Claimant has met her burden of proof to establish that her left upper extremity injury was the natural and probable consequence of the right upper extremity injury. The fact that the left extremity problems progressed slowly did not require a separate claim to be filed and, consequently, timely notice was provided for the injuries. Moreover, the ALJ adopted Dr. Ketchum's opinion that claimant suffered a 10 percent permanent impairment to her left upper extremity based upon the *AMA Guides*. The Board agrees and affirms the ALJ's Award in all respects.

AWARD

WHEREFORE, it is the decision of the Board that the Award of Administrative Law Judge Kenneth J. Hursh dated June 10, 2008, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of October 2008.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: James E. Martin, Attorney for Claimant
Kip A. Kubin, Attorney for Respondent
Kenneth J. Hursh, Administrative Law Judge

⁵ *Casco v. Armour Swift-Eckrich*, 283 Kan. 508, 516, 154 P.3d 494, rev. denied (2007).